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# SUPER LAW GROUP, LLC

April 8, 2015

**Via Certified Mail, Return Receipt Requested**

Truck Rite Distribution System Corp.  
295 Lombardy Street  
Brooklyn, NY 11222

Truck Rite Corp.  
435 West Broadway  
New York, NY 10012

Paul Pompa  
Truck Rite Corp.  
435 West Broadway  
New York, NY 10012

Paul Pompa  
Truck Rite Distribution System Corp.  
295 Lombardy Street  
Brooklyn, NY 11222

Preston Trucking Company, Inc.  
c/o J. Sean Callahan  
4473 Evergreen Road  
Oxford, MD 21654

2015 APR 15 AM 11:16

OFFICE OF THE  
EXECUTIVE SECRETARIAT

AX-15-000-7792

Re: Notice of Violation and Intent to File Suit under the Clean Water Act

We are writing on behalf of Riverkeeper, Inc.<sup>1</sup> ("Riverkeeper") to notify you of Riverkeeper's intent to file suit against Truck Rite Distribution System Corp., Truck Rite Corp., Paul Pompa, and Preston Trucking Company, Inc.<sup>2</sup> (together "Truck Rite") pursuant to Section 505(a) of the federal Clean Water Act ("CWA")<sup>3</sup> for violations of the CWA.

<sup>1</sup> Riverkeeper, Inc. is a not-for-profit environmental organization existing under the laws of the state of New York, headquartered in Ossining, New York. Riverkeeper's mission includes safeguarding the environmental, recreational and commercial integrity of the Hudson River and its ecosystem, as well as the watersheds that provide New York City with its drinking water. Riverkeeper achieves its mission through public education, advocacy for sound public policies and participation in legal and administrative forums. Riverkeeper has more than 4,500 members, many of whom reside near to, use and enjoy the Hudson River and the waters and tributaries of New York Harbor, including Newtown Creek, Coney Island Creek, Jamaica Bay, and the Gowanus Canal; waters that are polluted by industrial stormwater runoff.

<sup>2</sup> J. Sean Callahan is the last recorded agent for Preston Trucking Company, Inc., which was a Maryland corporation that dissolved in 2003. Preston Trucking Company, Inc is the last recorded owner of 295 Lombardy Street and there is no record that this property was transferred from Preston Trucking Company, Inc's ownership.

<sup>3</sup> 33 U.S.C. § 1365(a). We refer to statutory provisions by their section in the Clean Water Act and provide the parallel citation to the United States Code only on first reference.

Riverkeeper intends to file suit, as an organization and on behalf of its adversely affected members, in the United States District Court for the Eastern District of New York seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this letter.<sup>4</sup>

Riverkeeper intends to take legal action because Truck Rite is discharging polluted stormwater from Truck Rite's warehousing and distribution facility located along Newtown Creek in Brooklyn ("the Facility") to the waters of the United States without a permit. This is a violation of Sections 301(a) and 402(p)(2)(B) of the Clean Water Act.<sup>5</sup> Further, Truck Rite has not applied for coverage under, nor complied with the conditions of, an individual National Pollutant Discharge Elimination System ("NPDES") permit or the General Permit for the Discharge of Stormwater Associated with Industrial Activity ("General Permit")<sup>6</sup> issued by the New York State Department of Environmental Conservation ("DEC"), in violation of Sections 402(p), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

The street address of the Facility is located at 512 Gardner Avenue and 295 Lombardy Street and can be uniquely identified by tax block and lot numbers as Block 2815 Lot 1, Block 2824 Lot 10 in Kings County.<sup>7</sup> The waters of the United States that are polluted by the Facility are Newtown Creek and the East River.

## I.

### **BACKGROUND**

With every rainfall event, hundreds of millions of gallons of polluted rainwater pour into New York Harbor, Long Island Sound, and other receiving waters. The consensus among agencies and water quality specialists is that stormwater pollution accounts for more than half of the total pollution entering the marine environment each year.<sup>8</sup>

DEC has designated more than 7,000 river miles, 319,000 acres of larger waterbodies, 940 square miles of bays and estuaries, and 592 miles of Great Lakes shoreline in the State as "impaired," or not meeting water quality standards, and unable to support beneficial uses such as

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<sup>4</sup> See 40 C.F.R. § 135.2(a)(3)(c) (notice of intent to file suit is deemed to have been served on the postmark date).

<sup>5</sup> 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

<sup>6</sup> New York State Department of Environmental Conservation, *SPDES Multi-Sector General Permit For Stormwater Discharges Associated With Industrial Activity*, Permit No. GP-0-12-001, (hereinafter "General Permit"), <http://www.dec.ny.gov/chemical/9009.html> (last visited Sept. 18, 2014). This General Permit replaces earlier general permits for the discharge of stormwater associated with industrial activity. It became effective on October 1, 2012, and will expire on September 30, 2017.

<sup>7</sup> Truck Rite Distribution System Corp. identifies 295 Lombardy Street as its operating address; however, Riverkeeper believes that 295 Lombardy Street and 512 Gardner Avenue are operated as one facility and thus Riverkeeper puts Truck Rite on Notice regarding violations at both sites.

<sup>8</sup> Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt. See 40 C.F.R. § 122.26(b)(13).



fish habitat and water contact recreation.<sup>9</sup> For the overwhelming majority of water bodies listed as impaired, stormwater runoff is cited as a primary source of the pollutants causing the impairment. Contaminated stormwater discharges can and must be controlled in order to improve the quality and health of these waterbodies.

Stormwater discharges flows from the Facility into Newtown Creek and ultimately into the East River and New York Harbor. DEC has classified Newtown Creek as an SD water.<sup>10</sup> Under New York's Water Quality Standards, a waterbody that is designated as SD is meant to be suitable for fishing and for fish, shellfish and wildlife survival.<sup>11</sup> The New York Water Quality Standards also set numeric and narrative criteria for different water pollution parameters including dissolved oxygen, oil and grease, suspended and settleable solids, bacteria (pathogens), pH, temperature, nutrients, and others. A waterbody must meet these numeric and narrative criteria in order to support its designated uses.<sup>12</sup>

Newtown Creek consistently fails to meet state water quality standards; illegal stormwater discharges from this Facility contribute to this failure.<sup>13</sup> In the past, DEC has designated Newtown Creek as impaired pursuant to Section 303(d) of the CWA<sup>14</sup> for failure to meet minimum water quality standards due to high oxygen demand (low levels of dissolved oxygen) and the presence of floatables (debris) attributable in part to urban stormwater runoff.<sup>15</sup> While the Creek has been removed from the list of waterbodies for which a Total Maximum Daily Load ("TMDL") must be developed, the degraded water quality conditions that led to the impaired listing have not been addressed; polluted discharges to Newtown Creek continue to reduce the dissolved oxygen level in the Creek.<sup>16</sup> Illegal stormwater discharges from this Facility carry oxygen demanding chemicals into Newtown Creek and therefore contribute directly to this problem.

For years, Newtown Creek was treated as an industrial dumping ground; businesses along its banks polluted with abandon. In recent decades, the City of New York has worked to reclaim the quality of New York Harbor and of Newtown Creek. The City and local residents have invested heavily in efforts to rejuvenate the Creek and surrounding neighborhoods. Recently, the U.S. EPA joined the effort by designating Newtown Creek a Superfund site, setting aside funds for a cleanup, and mobilizing public and private efforts to restore the Creek to a healthier state.<sup>17</sup>

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<sup>9</sup> See EPA, Watershed Assessment, Tracking and Environmental Results, New York Assessment Data for 2012, [http://ofmpub.epa.gov/waters10/attains\\_state.report\\_control?p\\_state=NY&p\\_cycle=2012&p\\_report\\_type=A](http://ofmpub.epa.gov/waters10/attains_state.report_control?p_state=NY&p_cycle=2012&p_report_type=A) (last visited Apr. 6, 2015).

<sup>10</sup> See 6 N.Y.C.R.R. § 890.6.

<sup>11</sup> See 6 N.Y.C.R.R. § 701.14.

<sup>12</sup> See 6 N.Y.C.R.R. §§ 702, 703.

<sup>13</sup> See NY DEC, *Impaired/DeListed Waters NOT Included on the 2012 Section 303(d) List Aug 2012*, available at [http://www.dec.ny.gov/docs/water\\_pdf/303dnotlisted12.pdf](http://www.dec.ny.gov/docs/water_pdf/303dnotlisted12.pdf).

<sup>14</sup> 33 U.S.C. § 1313(d).

<sup>15</sup> See NY DEC, *Impaired/DeListed Waters NOT Included on the 2012 Section 303(d) List Aug 2012*, available at [http://www.dec.ny.gov/docs/water\\_pdf/303dnotlisted12.pdf](http://www.dec.ny.gov/docs/water_pdf/303dnotlisted12.pdf).

<sup>16</sup> See *Id.*

<sup>17</sup> See 40 C.F.R. Part 300, App. B.

It is time for Truck Rite to join fully in this broader effort to restore the biological integrity of Newtown Creek. At a minimum, Truck Rite must stop illegally discharging polluted stormwater and other effluents.

## II.

### **STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED AND ACTIVITIES ALLEGED TO BE VIOLATIONS**

#### **A. Truck Rite is Discharging Stormwater Associated with Industrial Activity to Waters of the United States without a Permit.**

The CWA prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.<sup>18</sup> Truck Rite's industrial activity at the Facility has caused and continues to cause a "discharge of pollutants" within the meaning of Section 502(12) of the CWA<sup>19</sup> and a "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14) from the Facility on at least each and every day that there has been a rain event of more than 0.1 inches.<sup>20</sup> The Facility has exposed and continues to expose industrial pollutants to stormwater, at a minimum, by (a) maintaining trucks onsite and storing vehicles outside or otherwise exposing them to the elements, and (b) from vehicles entering and leaving the Facility that track pollutants off site. During precipitation events (including runoff from rainfall and snow or ice melt events), pollutants are carried away from the Facility in stormwater discharges into Newtown Creek.

Truck Rite's activities at the Facility include but are not limited to warehousing, shipping goods by truck, and vehicle maintenance. In carrying out these activities at the Facility, Truck Rite stores and handles materials in a manner that exposes pollutants to precipitation and snowmelt. Vehicle maintenance and repair activities ranging from fluid changes or top-ups to parts replacements release a variety of pollutants, both solid and liquid, onto the surface of the Facility. The stormwater discharged into Newtown Creek can bring solids that suspend or dissolve, oil, hydraulic fluids, heavy metals, grease, and other pollutants into the Creek.<sup>21</sup>

In addition, machinery on the site may release fuel, oil, lubricants, PCBs, PAHs, an array of metals, pH-affecting substances, and chemical residue. These toxic pollutants are often generated in the form of small particulate matter, which settles on the ground and other surfaces that are exposed to stormwater and non-stormwater flows. Also, vehicles at the Facility may

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<sup>18</sup> See CWA §§ 301(a) and 402.

<sup>19</sup> 33 U.S.C. § 1362(12).

<sup>20</sup> EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity. See, e.g., 40 C.F.R. § 122.26(c)(i)(E)(6) (using 0.1 inches as the distinguishing threshold of a storm event).

<sup>21</sup> See EPA, "Industrial Stormwater Fact Sheet Series, Sector P: Land Transportation and Warehousing Facilities," available at [http://water.epa.gov/polwaste/npdes/stormwater/upload/sector\\_p\\_transportationfacilities.pdf](http://water.epa.gov/polwaste/npdes/stormwater/upload/sector_p_transportationfacilities.pdf).



expose many other pollutants to the elements, including gasoline, diesel fuel, anti-freeze, and hydraulic fluids.

Riverkeeper has observed and documented evidence of the release of polluted stormwater at the Facility, which includes a parking lot and distribution center loading bays located along Newtown Creek. Trucks remain uncovered on the property. Trucks entering and leaving the property discharge pollutants. The Facility also includes a vehicle maintenance area. When it rains, stormwater washes over the Facility, picks up pollutants on the property, including gasoline and other hydrocarbons spilled on the site, and carries this material over the northern side of the Facility into Newtown Creek.

Further, some of the polluted stormwater that has come into contact with Truck Rite's equipment and materials discharges into storm drains on the Facility. On information and belief, these storm drains empty directly to Newtown Creek. Any stormwater entering the storm drains on the Facility is discharged into Newtown Creek.

Because Truck Rite fails to adequately fence, shelter, and otherwise contain materials to prevent their release to the environment, precipitation falls on and flows over exposed materials, fluids, and particulates. Stormwater picks up sediment, oil, grease, metals, paints, plastic, solvents, nutrients, pathogens, particulates, dust and other solids that can dissolve or suspend in stormwater, and other trash and pollutants associated with the Facility's operations. Stormwater, objects, and debris are then conveyed off-site and into waters of the United States. Further, vehicles at the Facility track dust, particulate matter, and other contaminants to areas on and off the premises from which these pollutants can enter stormwater and, ultimately, waters of the United States.

Polluted stormwater discharges flow from the Facility into Newtown Creek, which is a "water of the United States," as defined in 40 C.F.R. § 122.2 and, therefore, a "navigable water" as defined in Section 502(7) of the CWA. Truck Rite does not have a NPDES permit for these discharges of pollutants. Thus, Truck Rite is discharging polluted industrial stormwater into navigable waters of the United States without the permit required under Sections 301 and 402 of the CWA.

**B. Truck Rite is Violating the Clean Water Act by Failing to Apply for NPDES Permit Coverage.**

Truck Rite is engaged in the business of motor freight transportation and warehousing. These activities are categorized under Standard Industrial Classification ("SIC") Code Group 42, which is included in Sector P of the General Permit. Pursuant to Section 402(p) of the CWA and regulations promulgated by EPA pursuant to the CWA, as an entity conducting activities in this SIC code Truck Rite must apply for coverage under the General Permit or an individual NPDES permit for Truck Rite's discharge of polluted stormwater. By failing to apply for coverage under

the General Permit or an individual permit, Truck Rite is violating CWA Sections 301(a) and 402(a) and (p) and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).<sup>22</sup>

To be eligible to discharge under the General Permit, Truck Rite must submit to DEC a registration form called a "Notice of Intent."<sup>23</sup> Notice of Intent forms are available online from DEC.<sup>24</sup> To register, Truck Rite is required, among other things, to list all stormwater discharges, including descriptions of the industrial activities taking place in the drainage area of each discharge and the acreage of industrial activity exposed to stormwater, the separate storm sewer system or immediate surface water body or wetland to which site runoff discharges, and the name of the watershed and nearest waterbody to which the site ultimately discharges and information about whether the receiving waters are impaired.<sup>25</sup> Truck Rite has failed to prepare and file a Notice of Intent or an application for an individual permit.<sup>26</sup>

**C. Truck Rite is Violating the Clean Water Act by Failing to Comply with the General Permit.**

As a discharger of stormwater associated with industrial activity, Truck Rite must comply at all times with the requirements of the General Permit (or an individual permit).<sup>27</sup> By discharging stormwater associated with industrial activity without complying with the General Permit, Truck Rite is violating CWA Sections 301(a) and 402(a) and (p).<sup>28</sup> The main General Permit requirements that Truck Rite has failed and continue to fail to meet are explained further below.

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<sup>22</sup> Sections 301(a) and 402(a) and (p) make it unlawful for Truck Rite to discharge stormwater associated with industrial activity without obtaining a NPDES permit. 40 C.F.R. Sections 122.26(c)(1) and (e)(1) requires Truck Rite to apply for a NPDES permit that covers Truck Rite's discharge of stormwater associated with industrial activity.

<sup>23</sup> See General Permit, Part I.E.3. In notifying Truck Rite that the Clean Water Act requires coverage under and compliance with a valid NPDES permit in order to lawfully discharge, and that submission of a Notice of Intent to DEC is required in order to obtain coverage under the General Permit, Riverkeeper does not concede that all of the activities conducted at the Facility are necessarily eligible for coverage under that permit. For example, if the Facility is discharging process wastewater, such as wash water, or has any other polluted non-stormwater discharge that is not authorized by the General Permit, then an individual NPDES permit is required and the failure to obtain and comply with an individual NPDES permit for such discharges also violates CWA §§ 301(a) and 402(p). The conditions for eligibility to discharge under the General Permit are provided in Part I.C of the permit.

<sup>24</sup> See [http://www.dec.ny.gov/docs/water\\_pdf/gpnoi.pdf](http://www.dec.ny.gov/docs/water_pdf/gpnoi.pdf).

<sup>25</sup> See Division of Water, NY DEC, *Notice of Intent For Stormwater Discharges Associated with Industrial Activity under the State Pollutant Discharge Elimination System (SPDES) Multi-Sector General Permit GP-0-12-001 (MSGP)* (2012), available at [http://www.dec.ny.gov/docs/water\\_pdf/gpnoi.pdf](http://www.dec.ny.gov/docs/water_pdf/gpnoi.pdf).

<sup>26</sup> A thorough search of EPA's Enforcement & Compliance History Online ("ECHO") database and DEC's records reveals that no Notice of Intent has been submitted for the Facility.

<sup>27</sup> This section discusses the compliance requirements of the General Permit. If Truck Rite elect to seek coverage under an individual NPDES permit instead, the conditions of that individual permit will be at least as strict as those of the General Permit, thus Truck Rite will still be required to comply with all of the following.

<sup>28</sup> Sections 301(a) and 402(a) and (p) make it unlawful for Truck Rite to discharge stormwater associated with industrial activity without first complying with all of the conditions established in a NPDES permit.



**1. Truck Rite has failed to develop and implement a Stormwater Pollution Prevention Plan.**

Before submitting a registration form, Truck Rite must prepare, make available, and implement a Stormwater Pollution Prevention Plan (“SWPPP”) in accordance with schedules established in the General Permit.<sup>29</sup> The SWPPP must identify potential sources of pollution that may affect the quality of stormwater discharges associated with industrial activity. Further, the SWPPP must describe and ensure the implementation of practices that minimize the discharge of pollutants in these discharges and that assure compliance with the other terms and conditions of the General Permit, including achievement of effluent limitations.<sup>30</sup>

Among other things, the SWPPP must include: a general site description, a general location map identifying the location of the facility and all receiving waters to which stormwater discharges, information related to a company stormwater pollution prevention team, a summary of potential pollutant sources, a description of control measures and best management practices, and schedules and procedures for implementation of control measures, monitoring and inspections.<sup>31</sup>

Truck Rite has failed to develop and implement a legally compliant SWPPP, as required by Part III of the General Permit.<sup>32</sup>

**2. Truck Rite has failed to implement control measures and Best Management Practices that are selected to meet best available technology standards.**

Truck Rite cannot legally discharge stormwater under the General Permit until Truck Rite implements mandatory general and sector-specific control measures called Best Management Practices (“BMPs”) in order to minimize the discharge of pollutants from the Facility.<sup>33</sup> The selected measures must reduce the discharge of pollution from the Facility to the extent practicable through use of the best available technology for Truck Rite’s industry.

The General Permit requires that “[t]he owner or operator must select, design, install, and implement control measures (including best management practices),” in accordance with good engineering practices, to meet the effluent limits contained in the permit.<sup>34</sup> The General Permit’s effluent limits include both numeric limits specific to certain sectors<sup>35</sup> and non-numeric technology-based effluent limits that apply to all facilities.<sup>36</sup> These non-numeric technology-

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<sup>29</sup> See General Permit Part III.B.

<sup>30</sup> See General Permit Part III.A.

<sup>31</sup> See General Permit Part III.C.

<sup>32</sup> On information and belief, no SWPPP exists. If a SWPPP exists, then it is either facially inadequate or has not been fully and adequately implemented.

<sup>33</sup> See General Permit Part I.B.1, *see also* Part VII (setting forth sector-specific control measures and practices).

<sup>34</sup> General Permit Part I.B.1.a. *See also* Part III.C.7 (“The SWPPP must document the location and type of BMPs installed and implemented at the facility to achieve the non-numeric effluent limits in Part I.B.1.a.(2) and where applicable in Part VIII, and the sector specific numeric effluent limitations in Part VIII.”).

<sup>35</sup> See General Permit, Part VIII.

<sup>36</sup> See General Permit, Part I.B.1.a.2.

based restrictions include minimizing the exposure of pollutants to stormwater<sup>37</sup> and minimizing the discharge of pollutants in stormwater<sup>38</sup> “to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.”<sup>39</sup>

Truck Rite has not minimized the discharge of pollution to the extent achievable by implementing control measures or BMPs that are technologically achievable and economically practicable and achievable in light of best industry practice, as required by Parts I.B.1 and VIII of the General Permit.

**3. Truck Rite has failed to conduct routine site inspections and comply with monitoring, recordkeeping, and reporting requirements.**

Truck Rite must conduct an annual comprehensive site inspection and evaluation of areas where industrial materials or activities are exposed to precipitation or where spills and leaks have occurred within the past three years.<sup>40</sup> The inspection must ensure that all stormwater discharges are adequately controlled and that all BMPs are functioning as expected.<sup>41</sup> Records of this inspection must be kept for five years.<sup>42</sup>

In addition, qualified facility personnel must carry out routine inspections at least quarterly.<sup>43</sup> During these inspections, personnel must evaluate conditions and maintenance needs of stormwater management devices, detect leaks and ensure the good condition of containers, evaluate the performance of the existing stormwater BMPs described in the SWPPP, and document any deficiencies in the implementation and/or adequacy of the SWPPP.<sup>44</sup> Such deficiencies must then be addressed through corrective actions.

The General Permit requires that all covered facilities conduct multiple types of analytical monitoring, and DEC may require additional individualized monitoring as well.<sup>45</sup> In particular, all facilities authorized under the General Permit must:

- collect and analyze stormwater samples for each outfall at least annually;<sup>46</sup>
- conduct visual monitoring of stormwater discharges at least quarterly;<sup>47</sup>
- perform an annual dry weather inspection to detect non-stormwater discharges;<sup>48</sup>

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<sup>37</sup> See General Permit, Part I.B.1.a.2.a.

<sup>38</sup> See General Permit, Part I.B.1.a.2.f.

<sup>39</sup> General Permit, Part I.B.1.

<sup>40</sup> See General Permit, Part IV.A.1.

<sup>41</sup> See General Permit, Part IV.A.1.

<sup>42</sup> See General Permit, Part IV.A.2.

<sup>43</sup> See General Permit, Part III.C.7.b.2.

<sup>44</sup> See General Permit, Part III.C.7.b.1 and b.3.

<sup>45</sup> See General Permit, Part IV.B.3.

<sup>46</sup> See General Permit, Part IV.B.1.c (requiring at least annual collection and analysis of stormwater samples). See General Permit, Part IV.B.1.d, .e, .f, and .g for obligations to sample more frequently.

<sup>47</sup> See General Permit, Part IV.B.1.a.



- inspect, sample and monitor discharges from coal pile runoff;<sup>49</sup>
- inspect, sample and monitor discharges from secondary containment structures and transfer areas;<sup>50</sup>
- document storm events during which any samples are taken;<sup>51</sup>
- document all of these monitoring activities;<sup>52</sup>
- keep records of the monitoring with the Facility's SWPPP;<sup>53</sup> and
- submit an annual report to DEC accompanied by a Discharge Monitoring Report detailing the results of all required stormwater samples, as well as reports that documents any instance of non-compliance with benchmarks or numeric effluent limitations.<sup>54</sup>

Because Truck Rite engages in industrial activities associated with Sector P, sampling is required for:

- Oil & Grease,
- Chemical Oxygen Demand (COD),
- Benzene,
- Ethylbenzene,
- Toluene, and
- Xylene.<sup>55</sup>

Riverkeeper is not necessarily aware of all industrial activities taking place at the Facility. To the extent that industrial activities other than the above are carried out at the Facility, other sampling may be required as well.<sup>56</sup> This notice provides Truck Rite with sufficient information to identify these standards and limitations.

Truck Rite has failed to conduct the required annual and other routine inspections, monitoring, and testing, as required by, at least, Parts III, IV, and VIII of the General Permit. Truck Rite also has failed to retain records and submit monitoring reports to DEC, as required by, at least, Parts IV and VIII of the General Permit.

**4. Truck Rite has failed to comply with additional requirements located in Part VIII of the General Permit.**

As noted above, the General Permit contains various requirements specific to land transportation and warehousing facilities. These requirements, some of which are referenced above, are collected in Part VIII of the General Permit. They include:

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<sup>48</sup> See General Permit, Part IV.B.1.b.

<sup>49</sup> See General Permit, Part IV.B.1.d.

<sup>50</sup> See General Permit, Part IV.B.1.f.

<sup>51</sup> See General Permit, Part IV.B.2.c.

<sup>52</sup> See, e.g., General Permit, Parts IV.B.1.a.8, IV.B.1.b.4, IV.B.1.c.9, *see generally* Part IV.E.

<sup>53</sup> See General Permit, Part IV.E.

<sup>54</sup> See General Permit, Part IV.B.1 and 2 and Part IV.C.

<sup>55</sup> See General Permit, Part VIII, Sector P.

<sup>56</sup> See General Permit, Part VIII.

- A requirement to describe and assess in Truck Rite's SWPPP the potential for the following to contribute pollutants to stormwater discharges:
  - On-site waste storage or disposal;
  - Dirt/gravel parking areas for vehicles awaiting maintenance; and,
  - Fueling areas.
- A requirement that the following areas/activities be included in all inspections:
  - Storage area for vehicles /equipment awaiting maintenance;
  - Fueling areas;
  - Indoor and outdoor vehicle/equipment maintenance areas;
  - Material storage areas;
  - Vehicle/equipment cleaning areas; and
  - Loading/unloading areas.
- A requirement that employee training take place, at a minimum, annually (once per calendar year) and address the following, as applicable:
  - Used oil and spent solvent management;
  - Fueling procedures;
  - General good housekeeping practices;
  - Proper painting procedures; and
  - Used battery management.
- A requirement that storage of vehicles and equipment awaiting maintenance with actual or potential fluid leaks be confined to designated areas (delineated on the site map). The SWPPP shall document considerations of the following BMPs (or their equivalents):
  - The use of drip pans under vehicles and equipment;
  - Indoor storage of vehicles and equipment;
  - Installation of berms or dikes;
  - Use of absorbents;
  - Roofing or covering storage areas; and
  - Cleaning pavement surface to remove oil and grease.
- A requirement that the SWPPP describe and provide for implementation of measures that prevent or minimize contamination of the stormwater runoff from fueling areas. The SWPPP shall document consideration of the following measures (or their equivalents):
  - Covering the fueling area;
  - Using spill/overflow protection and cleanup equipment;



- Minimizing stormwater run-on/runoff to the fueling area;
- Using dry cleanup methods; and
- Treating and/or recycling collected stormwater runoff.
- A requirement that storage vessels of all materials (e.g., for used oil/oil filters, spent solvents, paint wastes, hydraulic fluids) are maintained in good condition, so as to prevent contamination of stormwater, and plainly labelled (e.g., "used oil," "spent solvents," etc.). The SWPPP shall document considerations of the following storage-related BMPs (or their equivalents):
  - Indoor storage of the materials;
  - Installation of berms/dikes around the areas, minimizing runoff of stormwater to the areas;
  - Using dry cleanup methods; and
  - Treating and/or recycling the collected stormwater runoff.
- A requirement that the SWPPP describe and provide for implementation of measures that prevent or minimize contamination of stormwater runoff from all areas used for vehicle/equipment cleaning. The SWPPP shall document considerations of the following BMPs (or their equivalents):
  - Performing all cleaning operations indoors;
  - Covering the cleaning operation;
  - Ensuring that all wash waters drain to a proper collection system (i.e., not the stormwater drainage system unless SPDES permitted); and,
  - Treating and/or recycling the collected stormwater runoff.
- A requirement that the SWPPP describe and provide for implementation of measures that prevent or minimize contamination of the stormwater runoff from all areas used for vehicle/equipment maintenance. The SWPPP shall document consideration of the following BMPs (or their equivalents):
  - Performing maintenance activities indoors; using drip pans;
  - Keeping an organized inventory of materials used in the shop;
  - Draining all parts of fluids prior to disposal;
  - Prohibiting wet clean up practices where the practices would result in the discharge of pollutants to stormwater drainage systems;
  - Using dry cleanup methods;
  - Treating and/or recycling collected stormwater runoff; and
  - Minimizing runon/runoff of stormwater to maintenance areas.<sup>57</sup>

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<sup>57</sup> See General Permit, Part VIII, Sector P.

Truck Rite's activities are included in the definition of industrial activity to which the CWA applies. Therefore, Truck Rite must obtain coverage under and comply with the requirements of the General Permit, including those specific to Truck Rite's industrial activities, as described in Part VIII and outlined above. Truck Rite has failed to obtain coverage under the General Permit and comply with these additional requirements.

**5. Truck Rite has failed to meet certain additional criteria that apply because Truck Rite discharges into an impaired waterbody.**

Discharges to an impaired waterbody are not eligible for coverage under the General Permit if the cause of impairment is a pollutant of concern included in the benchmarks and/or effluent limitations to which the facility is subject unless the facility:

- Prevents all exposure to stormwater of the pollutant(s) for which the waterbody is impaired,
- Documents that the pollutant for which the waterbody is impaired is not present onsite, or
- Provides additional information in the SWPPP to minimize the pollutant of concern causing the impairment as specified in Part III.F.4.<sup>58</sup>

Newtown Creek is an impaired waterbody. Its impairment is caused by low dissolved oxygen. Chemical oxygen demand is included in the benchmarks monitoring requirements to which the Facility is subject. Truck Rite has not prevented all exposure of chemicals demanding oxygen to stormwater. Truck Rite has not documented that chemical oxygen demand is not present onsite. Truck Rite has not submitted a SWPPP with the additional information specified in Part III.F.4 of the General Permit.

In addition, because Newtown Creek is impaired by a pollutant of concern included in the benchmarks and/or effluent limitations to which the facility is subject, Truck Rite is required to collect and analyze stormwater samples for each outfall for chemical demand oxygen quarterly.<sup>59</sup> Truck Rite has failed to comply with this requirement.

**6. Truck Rite is clearly violating the Clean Water Act.**

In sum, Truck Rite's discharge of stormwater associated with industrial activities without a permit, Truck Rite's failure to apply for permit coverage, and Truck Rite's failure to comply with the above-listed conditions of the General Permit (or an individual NPDES permit) constitute violations of the General Permit and of Sections 301(a) and 402(p) of the Clean Water Act.

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<sup>58</sup> See General Permit Part II.C.1.

<sup>59</sup> See General Permit, Part IV.B.1.g.



### III.

#### **PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS**

Truck Rite Distribution System Corp., Truck Rite Corp., Paul Pompa, and Preston Trucking Company are the responsible parties for the violations alleged in this Notice (as defined by Section 502(5) of the CWA). They own the land and/or have operational control over the day-to-day industrial activities at this Facility. Therefore, they are responsible for managing stormwater at the Facility in compliance with the CWA. Riverkeeper hereby puts Truck Rite on notice that if Riverkeeper subsequently identifies additional persons as also being responsible for the violations set forth above, Riverkeeper intends to include those persons in this action.

### IV.

#### **LOCATION OF THE ALLEGED VIOLATION**

The violations alleged in this Notice have occurred and continue to occur at the Facility which is located at 512 Gardner Avenue and 295 Lombardy Street and can be uniquely identified by tax block and lot numbers as Block 2815 Lot 1, Block 2824 Lot 10 in Kings County. The north side of the Facility runs along and discharges directly into Newtown Creek.

The failure to develop and implement pollution prevention plans and take the other required measures are violations occurring at the Facility in general and in the inadequate documents themselves.<sup>60</sup>

### V.

#### **DATES OF VIOLATION**

Every day upon which Truck Rite has failed to apply for permit coverage since Truck Rite first commenced operations at the Facility and discharged polluted stormwater is a separate violation of Section 301(a) of the CWA and EPA's regulations implementing the CWA.<sup>61</sup> These days of violation have continued consecutively since Truck Rite commenced operation at the Facility.

<sup>60</sup> The federal courts have held that a reasonably specific indication of the area where violations occurred, such as the name of the facility, is sufficient and that more precise locations need not be included in the notice. *See, e.g., Natural Resources Defense Council v. Southwest Marine, Inc.*, 945 F. Supp. 1330, 1333 (S.D. Cal. 1996), *aff'd* 236 F.3d 985, 996 (9th Cir. 2000); *City of New York v. Anglebrook Ltd. Partnership*, 891 F. Supp. 900, 908 (S.D.N.Y. 1995); *Assateague Coastkeeper v. Alan & Kristin Hudson Farm*, 727 F. Supp. 2d 433, 439 (D. Md. 2010); *United Anglers v. Kaiser Sand & Gravel Co.*, No. C 95-2066 CW, 1995 U.S. Dist. LEXIS 22449 at \*4 (N.D. Cal. Sept. 27, 1995).

<sup>61</sup> *See* 33 U.S.C. §§ 402(p)(3)(A) and (p)(4)(A) (requiring the establishment of industrial stormwater NPDES permits and of a permit application process).

Additionally, Truck Rite has discharged without a permit in violation of Section 301(a) of the CWA on every day since Truck Rite commenced operations at the Facility on which there has been a measurable precipitation event or discharge of previously accumulated precipitation (i.e., snowmelt) over 0.1 inches.

Finally, if Truck Rite seeks permit coverage after receiving this letter but fail to fully comply with the requirements of the General Permit (or an individual permit), each day upon which Truck Rite claims coverage under a NPDES permit but fail to comply with that permit will constitute a separate day of violation with respect to each unmet condition of that permit.

Truck Rite is liable for the above-described violations occurring prior to the date of this letter and for every day after the date of this letter that these violations continue. In addition to the violations set forth above, this Notice covers all violations of the CWA evidenced by information that becomes available after the date of this Notice of Intent to File Suit.<sup>62</sup> These violations are ongoing, and barring full compliance with the permitting requirements of the Clean Water Act, these violations will continue.

## VI.

### **RELIEF REQUESTED**

Riverkeeper will ask the court to order Truck Rite to comply with the Clean Water Act, to pay penalties, and to pay Riverkeeper's costs and legal fees.

First, Riverkeeper will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d), and such other relief as permitted by law. Riverkeeper will seek an order from the Court requiring Truck Rite to obtain NPDES permit coverage and to correct all other identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Second, pursuant to Section 309(d) of the CWA,<sup>63</sup> each separate violation of the CWA subjects Truck Rite to a penalty not to exceed \$32,500 per day for each violation which occurred between March 15, 2004 and January 12, 2009, and up to \$37,500 per day for each violation that occurred after January 12, 2009.<sup>64</sup> Riverkeeper will seek the full penalties allowed by law.

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<sup>62</sup> See, e.g. *Public Interest Research Grp. v. Hercules, Inc.*, 50 F.3d 1239, 1248-49 (3d Cir.1995) (a notice that adequately identifies specific violations to a potential defendant also covers repeated and related violations that the plaintiff learns of later. "For example, if a permit holder has discharged pollutant 'x' in excess of the permitted effluent limit five times in a month but the citizen has learned only of four violations, the citizen will give notice of the four violations of which the citizen then has knowledge but should be able to include the fifth violation in the suit when it is discovered.").

<sup>63</sup> 33 U.S.C. § 1319(d); see also 40 C.F.R. § 19.4 (Adjustment of Civil Monetary Penalties for Inflation).

<sup>64</sup> 40 C.F.R. § 19.2.



Third and lastly, pursuant to Section 505(d) of the CWA, Riverkeeper will seek recovery of litigation fees and costs (including reasonable attorney and expert witness fees) associated with this matter.

**VII.**

**PERSONS GIVING NOTICE**

The full name, address, and telephone number of the persons giving notice are as follows:

Riverkeeper, Inc.  
20 Secor Road  
Ossining, NY 10562  
(914) 478-4501 x 224  
Attn.: Sean Dixon

**VIII.**

**IDENTIFICATION OF COUNSEL**

Riverkeeper is represented by legal counsel in this matter. The name, address, and telephone number of Riverkeeper's attorneys are:

Reed Super, Esq.  
Edan Rotenberg, Esq.  
Super Law Group, LLC  
411 State Street, Suite 2R  
Brooklyn, New York 11217  
(212) 242-2355

**IX.**

**CONCLUSION**

The foregoing provides more than sufficient information to permit Truck Rite to identify the specific standard, limitation, or order alleged to have been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the location of the alleged violation, the date or dates of such violation, and the full name, address, and telephone number of the person giving notice.<sup>65</sup>

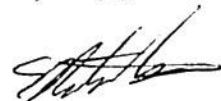
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<sup>65</sup> 40 C.F.R. § 135.3(a).

If Truck Rite has developed a SWPPP, Riverkeeper requests that Truck Rite send a copy to the undersigned attorney.<sup>66</sup> Otherwise, Riverkeeper encourages Truck Rite to begin developing a SWPPP immediately after receiving this letter and asks that Truck Rite please inform the undersigned attorney of Truck Rite's efforts so Riverkeeper can work with Truck Rite to avoid disputes over the contents of the SWPPP.<sup>67</sup>

During the sixty-day notice period, Riverkeeper is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of protracted litigation. If Truck Rite wishes to pursue such discussions, please contact the undersigned attorney immediately so that negotiations may be completed before the end of the sixty-day notice period. We do not intend to delay the filing of a complaint in federal court, regardless of whether discussions are continuing at the conclusion of the sixty days.

Very truly yours,



Edan Rotenberg  
Super Law Group, LLC  
411 State Street, Suite 2R  
Brooklyn, New York 11217  
(212) 242-2355

cc:

Gina McCarthy, Administrator  
Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

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<sup>66</sup> Note that under Part III.D.2 of the General Permit, the owner or operator of a facility "must make a copy of the SWPPP available to the public within 14 days of receipt of a written request."

<sup>67</sup> Riverkeeper will not send a new notice letter in response to any effort Truck Rite makes to come into compliance with the Clean Water Act after receiving this letter, for example, by developing a SWPPP. The federal courts have held that citizens sending a notice letter are not required to identify inadequacies in compliance documents that do not yet exist and are "not required to send a second notice letter in order to pursue specific claims regarding the inadequacies of [a defendant's] post-notice compliance efforts." *WaterKeepers N. Cal. v. AG Indus. Mfg.*, 375 F.3d 913, 920 (9th Cir. 2004). See also *Natural Resources Defense Council v. Southwest Marine, Inc.*, 236 F.3d 985, 997 (9th Cir. 2000) ("subject matter jurisdiction is established by providing a notice that is adequate on the date it is given to the defendant. The defendant's later changes . . . do not retroactively divest a district court of jurisdiction under 33 U.S.C. § 1365(b)."); *City of New York v. Anglebrook L.P.*, 891 F. Supp. 900, 908 (S.D.N.Y. 1995) (plaintiff's notice letter based on inadequacies of defendant's original SWPPP held sufficient to establish court's jurisdiction, even though defendant later prepared a revised SWPPP).



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Judith A. Enck, EPA Region 2 Administrator  
Environmental Protection Agency  
290 Broadway  
New York, NY 10007-1866

Joseph Martens, Commissioner  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, NY 12233-1011

